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HOUSE BILL 426

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Daniel P. Silva

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; INCREASING PENALTIES AND INTEREST FOR LATE FILING OF WAGE REPORTS AND LATE PAYMENT OF TAXES; RESTRICTING THE USE OF A CERTAIN FUND; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 51-1-12 NMSA 1978 (being Laws 1965, Chapter 192, Section 1, as amended) is amended to read:

"51-1-12. PENALTY--LATE PAYMENT OF CONTRIBUTIONS.--The rate of contribution of an employer shall in no case be raised as a penalty for, or as a result of, the late filing of any notice, report or payment of contributions required under Section 51-1-9 NMSA 1978 or any regulations promulgated thereunder. Effective as to all wages for employment paid on and after July 1, 1965, quarterly wage and contribution reports

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1 and contribution payments, if not filed on or before the due
2 date as prescribed by the secretary, shall be subject to the
3 following penalties:

4 A. if the required report for any calendar quarter
5 is not filed within ten days after due date, a penalty of
6 [~~fifty dollars (\$50.00)~~] seventy-five dollars (\$75.00) is to be
7 paid by the employer;

8 B. if the contributions due on [~~such~~] the report
9 are not paid in full within ten days after due date, an
10 additional penalty of five percent but not less than twenty-
11 five dollars (\$25.00) is to be paid by the employer on any
12 [~~such~~] contributions remaining unpaid;

13 C. if any payment required to be made by the
14 Unemployment Compensation Law is attempted to be made by check
15 [~~which~~] that is not paid upon presentment, a penalty of twenty-
16 five dollars (\$25.00) shall be paid by the employer; and

17 D. in no case shall any penalty as herein provided
18 [~~or as imposed by this section prior to June 30, 1965~~] be
19 assessed for any quarter prior to the six completed calendar
20 quarters immediately preceding the quarter in which the
21 employer shall be determined subject to the Unemployment
22 Compensation Law, and in no case shall a penalty for late
23 reporting or late payment of contribution be imposed if, in the
24 opinion of the secretary, an employer's late reporting, late
25 payment of contribution, or both, was occasioned by

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1 circumstances beyond the control of the employer, who in good
2 faith exercised reasonable diligence in an effort to comply
3 with the reporting and contribution payment provisions of the
4 Unemployment Compensation Law."

5 Section 2. Section 51-1-34 NMSA 1978 (being Laws 1936
6 (S.S.), Chapter 1, Section 13, as amended) is amended to read:

7 "51-1-34. ADMINISTRATION FUNDS.--

8 A. There is created a special fund to be held in
9 the custody of the state treasurer and known as the
10 "unemployment compensation administration fund".

11 (1) All money paid into the fund is available
12 to the secretary. All money in the fund shall be expended
13 solely for the purposes and in the amount found necessary by
14 the secretary of labor of the United States [~~of America~~] for
15 the administration of the Unemployment Compensation Law.
16 Except as provided in Subsection B of this section, the fund
17 shall consist of money appropriated by the state, and all money
18 received from the federal government or any of its agencies,
19 including the department of labor of the United States [~~of~~
20 ~~America~~], the railroad retirement board or from any other
21 source for such purpose. Money received from the railroad
22 retirement board as compensation for services or facilities
23 supplied to the board shall be paid into the fund. All money
24 in the fund shall be deposited, administered and disbursed in
25 accordance with the Unemployment Compensation Law and

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1 regulations, except that money in the fund shall not be
2 commingled with other state funds but shall be maintained in a
3 separate account on the books of the depository. Any balance
4 in the fund shall not lapse at any time but shall be
5 continuously available for expenditure consistent with the
6 Unemployment Compensation Law. Such money is subject to the
7 general laws applicable to the deposit of public money in New
8 Mexico, and collateral pledged shall be maintained in a
9 separate custody account.

10 (2) If Section 303(a)(5) of Title 3 of the
11 Social Security Act and Section 3304(a)(4) of the Internal
12 Revenue Code are amended to permit a state agency to use, in
13 financing administrative expenditures incurred in carrying out
14 its employment security functions, some part of the money
15 collected, or to be collected, under the Unemployment
16 Compensation Law, in partial or complete substitution for
17 grants under Title 3, then the Unemployment Compensation Law
18 shall be modified by proclamation and by general rules in the
19 manner and to the extent and within the limits necessary to
20 permit such use under the Unemployment Compensation Law, and
21 the modification is effective on the same date as the use is
22 permissible under federal amendments.

23 B. There is created a special fund to be held in
24 the custody of the state treasurer and known as the "employment
25 security department fund".

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1 (1) The fund is separate from the unemployment
2 compensation administration fund.

3 (2) All money paid into the employment
4 security department fund may be expended only pursuant to an
5 appropriation by the legislature or specific provision of law.
6 The department shall submit its annual budget for expenditures
7 from the fund in accordance with the rules and regulations
8 established by the department of finance and administration
9 governing the submission of budgets by state agencies. All
10 balances in the fund at the end of the fiscal year [~~which~~] that
11 have not been appropriated for expenditure shall remain in the
12 fund and be invested by the state treasurer until appropriated
13 by the legislature. The money in the fund, except for refunds
14 of interest and penalties erroneously collected, and except for
15 fiscal-year balances, shall be expended solely for the purposes
16 and in the amount found necessary for the payment of the costs
17 of administration of the unemployment insurance program not
18 chargeable against federal grants or other funds received for
19 the unemployment compensation administration fund and shall not
20 be expended for any other purpose. Nothing in this section
21 shall prevent the unencumbered money of the fund from being
22 used as a revolving fund to cover necessary and proper
23 expenditures for which federal funds have been duly requested
24 but not yet received, subject to the charging of such
25 expenditures against such funds when received. Money shall not

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1 be expended or made available for expenditure in any manner
2 which would permit its substitution for, or cause a
3 corresponding reduction in, federal funds which would be
4 available, in the absence of such money, to finance
5 expenditures for the administration of the Unemployment
6 Compensation Law. The fund shall consist of all interest
7 collected on delinquent contributions and all penalties
8 provided by the Unemployment Compensation Law and all other
9 money received for the fund from any other source. All money
10 in the fund shall be deposited, administered and disbursed in
11 accordance with this section, except that money in the fund
12 shall not be commingled with other state funds but shall be
13 maintained in a separate account on the books of the depository
14 and is subject to the general laws applicable to the deposit of
15 public money in New Mexico, and collateral pledged shall be
16 maintained in a separate custody account.

17 C. The state treasurer is liable on his official
18 bond for the faithful performance of his duties in connection
19 with the funds created by Subsections A and B of this section,
20 in addition to the liability upon all other bonds."

21 Section 3. Section 51-1-36 NMSA 1978 (being Laws 1936
22 (S.S.), Chapter 1, Section 14, as amended) is amended to read:

23 "51-1-36. COLLECTION OF CONTRIBUTIONS.--

24 A. Contributions unpaid on the date on which they
25 are due and payable shall bear interest at the rate of one and

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1 one-half percent per month from and after such date until
2 payment is received by the division. Interest collected
3 pursuant to this subsection shall be paid into the employment
4 security department fund.

5 B. If, after due notice, any employer defaults in
6 any payment of contributions or interest thereon, the amount
7 due shall be collected by civil action in the name of the
8 division, and the employer adjudged in default shall pay the
9 costs of such action. Civil actions brought under this section
10 to collect contributions or interest thereon from an employer
11 shall be heard by the court at the earliest possible date and
12 shall be entitled to preference on the calendar of the court
13 over all other civil actions except petitions for judicial
14 review under this act and worker's compensation cases arising
15 under Sections 52-1-1 through 52-2-13 NMSA 1978 or in the
16 discretion of the secretary, if any contribution or any portion
17 thereof or any interest or penalty imposed by the Unemployment
18 Compensation Law is not paid within thirty days after the same
19 becomes due, the secretary shall, after due notice and
20 opportunity to be heard in accordance with regulations, issue a
21 warrant under its official seal, directed to the sheriff of any
22 county of the state commanding [~~him~~] the sheriff to levy upon
23 and sell the real and personal property of the person owning
24 the same, found within [~~his~~] that county, of the payment of the
25 amount due and an added amount of ten percent of the

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1 contribution in addition to any other penalties imposed and
2 costs of executing the warrant, and to return ~~[such]~~ the
3 warrant to the secretary and pay to ~~[him]~~ the secretary the
4 money collected by virtue thereof, by the time to be ~~[therein]~~
5 specified, not more than thirty days from the date of the
6 warrant. In the event the division does not know the amount of
7 contribution due, and the employer from whom the same is due
8 refuses or fails to make reports showing what ~~[he or it]~~ the
9 employer or the division claims for the amount of contributions
10 ~~[which it]~~ that the division believes to be due, and the
11 division files the warrant for the estimated amount, mailing
12 notice to the employer stating that ~~[it]~~ the division is
13 estimating the amount of contribution due and giving the
14 estimated amount in the notice, the warrant and estimated
15 amount shown ~~[therein]~~ shall have the same effect as any other
16 warrant issued under this subsection. If the employer does not
17 make a showing to the satisfaction of the secretary that the
18 estimated amount is incorrect within thirty days after the
19 warrant is filed with the county clerk, then the estimated
20 amount shown in the warrant shall be and become the amount of
21 the contribution due for the period stated in the warrant. The
22 sheriff to whom any warrant, issued under this section, is
23 directed shall, within five days after receipt of the same,
24 file with the county clerk of ~~[his]~~ the sheriff's county a copy
25 thereof, for which the clerk shall make no charge, and

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1 thereupon the county clerk shall record the same upon [~~his~~] the
2 clerk's records and the day when such copy is filed. Thereupon
3 the amount of the warrant so filed and entered shall become a
4 lien upon all property, real and personal, of the person
5 against whom it is issued, including choses in action, except
6 negotiable instruments not past due; provided, however, that
7 such lien shall be inferior to all other valid liens,
8 encumbrances, mortgages, judgments and assessments [~~which~~] that
9 are filed or placed of record prior to the filing of [~~such~~] the
10 warrant. The sheriff or a representative of the division
11 thereupon shall levy upon any property of the taxpayer,
12 including negotiable instruments, and the property so levied on
13 shall be sold in all respects with the like effect, and in the
14 same manner as is prescribed by law with respect to executions
15 against property upon judgments of a court of record, and the
16 remedies of garnishment shall apply. Whenever any property or
17 right to property upon which levy has been made is not
18 sufficient to satisfy the claim for which levy is made, the
19 sheriff or a representative of the division may thereafter, and
20 as often as may be necessary, proceed to levy in like manner
21 upon any other property or rights to property subject to levy
22 of the person against whom the claim exists, until the amount
23 due from [~~him~~] the person is fully paid. The sheriff shall be
24 entitled to the general fees for [~~his~~] services in executing
25 the warrant as now allowed by law for like services, to be

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1 collected in the same manner as now provided by law for like
2 services. All costs of executing warrants including mileage of
3 the sheriff serving and executing the same and all other costs
4 in connection with the levy, including advertising or
5 publication costs upon the sale of any property levied upon,
6 shall be collected by the department from the employer from
7 whom contribution is due.

8 C. In the event of any distribution of an
9 employer's assets pursuant to an order of any court under the
10 laws of this state, including any receivership, assignment for
11 benefit of creditors, adjudicated insolvency, composition or
12 similar proceeding, contributions then or thereafter due shall
13 be paid in full prior to all other claims except taxes and
14 claims for remuneration of not more than two hundred fifty
15 dollars (\$250) to each claimant, earned within six months of
16 the commencement of the proceeding. In the event of an
17 employer's adjudication in bankruptcy, judicially confirmed
18 extension proposal, or composition, under the Federal
19 Bankruptcy Code 11 U.S.C. Sec. 101 et seq., contributions then
20 or thereafter due shall be entitled to such priority as is
21 provided in the Federal Bankruptcy Code U.S.C. Title 11, Sec.
22 507.

23 D. If, not later than four years after the date on
24 which any contributions or interest thereon are paid, an
25 employing unit that has paid such contributions or interest

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1 ~~[thereon shall make]~~ makes application for an adjustment
2 ~~[thereof]~~ in connection with subsequent contribution payments
3 or for a refund ~~[thereof]~~ because ~~[such]~~ the adjustment cannot
4 be made, and the secretary ~~[shall determine]~~ determines that
5 ~~[such]~~ the contributions or interest or any portion ~~[thereof]~~
6 was erroneously collected, the secretary shall allow ~~[such]~~ the
7 employing unit to make an adjustment, ~~[thereof]~~ without
8 interest, in connection with subsequent contribution payments
9 by ~~[him]~~ the employing unit, or if such adjustment cannot be
10 made, the secretary shall refund the amount, without interest,
11 from the fund to which the amount was deposited. For like
12 cause and within the same period, adjustment or refund may be
13 ~~[so]~~ made on the secretary's own initiative.

14 E. Any person, group of individuals, partnership or
15 employing unit that acquires the organization, trade or
16 business or substantially all the assets ~~[thereof]~~ from an
17 employer shall notify the division in writing by registered
18 mail not later than five days prior to the acquisition. Unless
19 ~~[such]~~ notice is given, ~~[such]~~ the acquisition shall be void as
20 against the division, if, at the time of the acquisition, any
21 contributions are due and unpaid by the previous employer, and
22 the secretary shall have the right to proceed against ~~[such]~~
23 that employer either in personam or in rem and the assets so
24 acquired shall be subject to attachment for ~~[such]~~ the debt."

25 Section 4. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2005.

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